valid as otherwise any extension of the already thin dividing line in the spectrum of the ages of youthful offenders would result in ignoring other material considerations and result in a *reductio ad absurdum.*

In all the circumstances of this case and particularly in view of the disparity in relation to the punishment imposed on the other person involved as I have stated earlier I reduce the sentence of 4 years to 2 years imprisonment.

I would add immediately that I have done so in the special circumstances of this case which I have adumbrated and that the mere age of an offender is only one of the considerations to be taken into account and will not necessarily result in any alteration in sentence per se.

Order accordingly.

Solicitor: *J.R. Devadas.*

HAN PIT LOH SDN. BHD. v. CHUN HENG TIN MINE

[O.C.J. (Arulanandom J.) January 22, 1975]
[Ipoh — Civil Suit No. 380 of 1973]

Practice and Procedure — Conditional leave to defend — Amended statement of claim — No merits in defence — R.S.C., 1957, O.14.

In this case the plaintiffs sued the defendants for goods sold and delivered. The goods were sold by the Hup Fatt Tin Mining Kongsi, which was later purchased by the plaintiffs, Han Pit Loh Sendirian Berhad who became the successors to Hup Fatt Tin Mining Kongsi. The defence was a bare denial and denied any knowledge of the plaintiffs presumably on the ground that they had not purchased the goods from the plaintiffs but their predecessors in title. On an application for summary judgment, the Assistant Registrar granted conditional leave to defend to the defendants upon the defendants depositing the amount claimed within three weeks from the date of the order. The defendants appealed against the order of the Assistant Registrar.

Held: a study of the numerous defendants' affidavits in reply cannot but lead to the conclusion that the defence was not *bona fide* but merely an attempt to delay the process of the court and delay the delivery of judgment. Under the circumstance even final leave to enter judgment may have been the proper order to be given and the appeal must therefore be dismissed.

Case referred to:-

(1) *Foong Weng Tat* v. *Vu Siew Chin* [1974] 2 M.L.J. 20.

CIVIL SUIT.

J.R. Devadas for the appellants/defendants.

Ong Tin Kim for the respondents/plaintiffs.

Arulanandom J.: This is an appeal from the decision of the Senior Assistant Registrar whereby he granted conditional leave to the defendants to defend the suit when the plaintiffs sought an order under Order 14 for final judgment.

The claim was for goods sold and delivered to the defendants by one Hup Fatt Mining Kongsi, later amended to Hup Fatt Tin Mining Kongsi which was later purchased by Han Pit Loh Sendirian Berhad who became the successors to Hup Fatt Tin Mining Kongsi. According to the Statement of Claim and amended Statement of Claim at the time of the agreement of sale the defendants owed the said Hup Fatt Tin Mining Kongsi the sum of $11,345. The plaintiffs as successors to Hup Fatt Tin Mining Kongsi claimed this sum with other attendant reliefs from the defendants after having given due notice to the defendants.

The Specially Indorsed Writ was filed on December 20, 1973 and Defence filed on April 16, 1974. The defence was a bare denial and denied any knowledge of plaintiffs presumably on the ground that they had not purchased goods from the plaintiffs but their predecessors in title.

On May 13, 1974, a Summons in Chambers was filed for final judgment with an affidavit of merit.

The sole proprietor of the defendant firm through his present solicitors filed an affidavit in reply stating his dealings were with a third party and not with Hup Fatt Tin Mining Kongsi and also pleading limitation and stating he had good defence. He also stated the agreement did not constitute an assignment under section 4(3) of the Civil Law Ordinance, 1956.

On May 25, 1974, an application was made by defendants to amend the Defence whereby they stated they had no dealings with Hup Fatt Mining Kongsi (the name originally used by the plaintiffs as that of their predecessors in title). This application was allowed.

On July 10, 1974, the plaintiffs filed a Summons in Chambers to change the name Hup Fatt Mining Kongsi to Hup Fatt Tin Mining Kongsi and claiming that Notice of Assignment to the plaintiffs had been given to the defendants. This was opposed by the defendants but the application was allowed.

On September 18, 1974, an amended Statement of Defence was filed in terms of enclosure 19.

Further affidavits were filed and finally the application for final judgment was heard by the Senior Assistant Registrar on October 23, 1974 where he gave conditional leave to defend upon the defendants depositing the amount claimed within three weeks from date thereof.

The registrar dealt with the objections of the defendants and made his order for the following reasons. He did not see any merit in the objection that the affidavit and summons for judgment referred to the first Statement of Claim and not the amended one. The registrar held that in view of the affidavit in reply, the defect, if any, had been cured. He also held that the claim being one for a liquidated sum for goods sold and delivered, a mere denial was not sufficient. On the defence of limitation, he held that on the facts disclosed in the affidavit as the last payment by the defendants was on May 15, 1968, the claim was not statute-barred. He further went on to say that the Defence raised was a sham but in spite of that he gave the defendants conditional leave to defend.

As far as the registrar's grounds are concerned, it is settled law that amended statements of claim revert to the date of the original. Hence no new summons for judgment was needed. *Re* the other grounds, this court is fully in agreement with the principles relied on by the Senior Assistant Registrar.

In the appeal before this court, counsel for the appellants/defendants raised a further technical objection that the summons prayed for final judgment and not for leave for final judgment. This court saw no merit in this objection as the application in substance was for leave to sign final judgment. Counsel further argued that the agreement of November 27, 1971 did not comply with section 4(3) of the Civil Law Ordinance re assignment of rights to assignee to vest in them all the debts owing to the assignor. If the Senior Assistant Registrar was persuaded to state the defence was a sham, a consideration of this defence would more than put the seal on that description. A reading of the agreement makes it quite obvious that the transaction was between the same major parties who were reconstituting a private business into a private limited company under the Companies Act, and thus by this agreement providing the necessary assignments so that the new company could carry on the same business as a private limited company. Notice was given of the transfer to the defendants and therefore the defendants were bound by the assignment. Notice of assignment is valid even if no time is given.

As far as the plea of limitation was concerned, the Senior Assistant Registrar had given proper reasons why the claim was not statute-barred.

When one considers the defence and all the numerous affidavits filed by the defendants, the inescapable conclusion one has to come to is

(1) the defendants were merely denying the debt in order to take advantage of the reconstitution of their creditors into a private limited company.

(2) Their defence and affidavits were evasive. They stated they purchased goods from third parties while failing to disclose who the third parties were. It was only the plaintiffs' affidavits which disclosed that the so-called third parties were none other than the plaintiffs' predecessors in title or associates and this the defendants were fully aware of but did not wish to disclose at the start.

(3) While readily accepting receipts in the name of Hup Fatt Tin Mining Kongsi and Hup Fatt Kongsi at the material times in the full knowledge that it referred to one and the same people, in order to avoid a judgment they were attempting to take advantage of the difference in names without establishing that they were two different bodies.

Atkin's Court Forms 2nd Edn. Vol. 29 has this to say on page 138:

"The object of the defendant's affidavit in answer is to satisfy the Court that there is an issue or question in dispute to be tried or that there ought for some other reason to be a trial. This object cannot be achieved by a mere general denial of indebtedness nor by raising facts which do not constitute a defence to the claim....

If questions of fact are in dispute, the defendant's affidavit should not merely deny the facts alleged by the plaintiff but depose to his own version of the facts....

Generally speaking the facts upon which the defence relies are usually capable of concise expression and a lengthy affidavit is unnecessary: indeed a long, rambling affidavit full of irrelevant detail may bear the appearance of being a sham...."

A study of the numerous defendants' affidavits in reply, when attempts are made to raise triable issues when compelled to by the plaintiffs' affidavits cannot but lead to the conclusion that the defence is not *bona fide* but merely an attempt to delay the process of the court and delay the delivery of judgment. Under the circumstances even final leave may have been the proper order to be given (see *Foong Weng Tat* v. *Vu Siew Chin*),[1] but as there was no cross-appeal, if at all the defendant feels there are triable issues, which this court does not see, the defendant is not precluded from defending as he will still be able to defend the suit by complying with the condition.

For the reasons stated above I dismissed the appeal with costs and confirmed the Registrar's Order.

Appeal dismissed.

Solicitors: *J. R. Devadas; Ngan & Tan.*

LEONG KA KONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) November 7, 1975]
[Kuala Lumpur — Selangor Criminal Appeal No. 115 of 1975]

Criminal Law and Procedure — Appeal — Armed robbery — Appellant convicted on 4 charges of robbery with deadly weapons — Sentenced to 7 years' imprisonment on each charge and 3 strokes of the rotan — Imprisonment sentences ordered to run consecutively — Appeal against sentence — Circumstances in which appellate court would interfere.

Penal Code, ss. 34, 392 and 397 — Armed robbery with deadly weapon — Sentence.

The appellant was convicted and sentenced on 4 charges of robbery with deadly weapons. The learned president sentenced him to 7 years' imprisonment on each charge with 3 strokes of the rotan, the imprisonment sentences to run consecutively. The appellant appealed against those sentences.

Held, dismissing the appeal: (1) it is settled law that sentences should not be interfered with by the appellate court merely because the individual presiding in the higher court might, having personal views on the matter, have passed a different sentence. The court should not therefore interfere with the lower court's discretion unless there is apparent on the face of the record a manifest error either in law, or, in considering the facts and circumstances of the case;

(2) in this case the learned judge quite rightly considered the nature and gravity of the offences committed by the appellant and also the facts and circumstances surrounding the case.

CRIMINAL APPEAL

Lamin bin Hj. Mohamed Yunus (Senior Federal Counsel) for the Public Prosecutor.

Lall Harcharan Singh for the appellant.

Abdul Hamid J. (delivering oral judgment): Now, in this case, the appellant was charged with the following offences:—

(1) "That you on February 1, 1975 at about 4.20 p.m. at BP Petrol Station, Jalan Gasing, in the District of Petaling Jaya, in the State of Selangor, with another still at large, in furtherance of the common intention of all, robbed one Chua Siew Bee of cash $1,150, and at the time of committing the said robbery used a deadly weapon, to wit, one dagger, and that you have thereby committed an offence punishable under section 392 of the Penal Code read with sections 34 and 397 of the Penal Code."